

VZCZCXRO4779

PP RUEHCHI RUEHK RUEHHM RUEHKSO RUEHNAG RUEHPB  
DE RUEHKO #1779/01 1790957

ZNR UUUUU ZZH

P 270957Z JUN 08

FM AMEMBASSY TOKYO

TO RUEHC/SECSTATE WASHDC PRIORITY 5464

INFO RUEHZU/ASIAN PACIFIC ECONOMIC COOPERATION PRIORITY

RUEHFK/AMCONSUL FUKUOKA PRIORITY 8635

RUEHNAG/AMCONSUL NAGOYA PRIORITY 6867

RUEHNH/AMCONSUL NAHA PRIORITY 1011

RUEHOK/AMCONSUL OSAKA KOBE PRIORITY 2364

RUEHKSO/AMCONSUL SAPPORO PRIORITY 9220

RUEHBS/USEU BRUSSELS PRIORITY

UNCLAS SECTION 01 OF 02 TOKYO 001779

SENSITIVE  
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STATE FOR EAP/J, EEB

STATE PASS USTR FOR JMCHALE, EHOLLOWAY, JRAGLAND

STATE PASS DOC FOR DLEE, CDICKSON

E.O. 12958: N/A

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SUBJECT: JAPAN REACHES COMPROMISES ON COPY LEVIES AND  
DUBBING

TOKYO 00001779 001.2 OF 002

**¶1.** (SBU) Summary: The Cultural Affairs Agency (Bunkacho) and the Ministry of Economy, Trade and Industry (METI) announced June 17 a compromise on the contentious issue of copy levies. The agencies decided not to wait for the conclusions of a study group that had become deadlocked over the differing views of intellectual property (IP) rights holders, consumer electronic device makers, and content providers. This agreement allowed another compromise, announced June 19, to adopt the "dubbing 10" proposal to loosen current constraints on copying content for personal use within the home. Broadcasters announced June 23 they will launch a new "dubbing 10" system July 4, in time to allow time-shifted viewing of the Olympic Games. End summary.

**¶2.** (SBU) Bunkacho and METI announced June 17 a compromise agreement to expand modestly the scope of Japan's copy levy system. The new copy levy system will add blu-ray recorders and media to the list of covered products, but will not include devices with integrated or non-detachable storage media such as MP3 players, iPods, and HDD players. Device makers had resisted expanding the levy system, while IP rights holders had argued they needed the expansion, especially if Japan moves to loosen current rules to allow consumers to record more than one copy.

1992 Copy Levy System Needs Changing

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**¶3.** (SBU) Copy levies are a quasi-tax on select audio and audio-visual devices and media to remunerate rights holders for anticipated infringement. Proponents for expanding the system, established in 1992, argued it is outdated and inadequate. Levy collections dropped steadily over the past several years, in part because migration to newer technologies gradually eroded the scope of covered products. However, over the same period, risks of online infringement and piracy grew.

**¶4.** (SBU) Critics argue the current system is neither market-based nor effective, and feeds a bureaucracy built on the collections. Critics object as well to a plan they see expanding and further entrenching the system. They argue efforts should be made to improve TPMs (technical protection measures) and DRM (digital rights management) systems that would support sustainable business models to capture revenue based on consumption of content.

¶ 15. (SBU) The scope of products covered was also contentious. Makers of devices such as MP3 players and iPods opposed Bunkacho's plan to impose levies on those devices, but not on cell phones. A recent study of Japan's market showed net music industry revenues for distribution over the internet to PCs were USD 330 million in 2006, while distribution to mobile phones was valued at USD 1602 million. Industry is also concerned about a proposed "evaluation organization" that would review and revise the scope each year, making the entire system less predictable.

¶ 16. (SBU) Analysts note levies, while offering modest remuneration, do not establish incentives to promote development of TPMs. Rather, they can impede their advancement and adoption. One GOJ official commented Japan faces a pivotal decision: "whether to follow an EU model by expanding and further entrenching the levy system, or rely on an approach like that of the U.S. by promoting market mechanisms and seeking technical solutions.

Japan's "Dubbing 10" Proposal

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¶ 17. (SBU) The "dubbing 10" proposal would loosen rules that currently allow only a single copy of digital content, supported by technical copy-protections on Japanese broadcast digital content. These rules do not accommodate the principle of "fair use" and inhibit legal copying for personal use on distributed devices within a home or family. The proposal to allow up to nine additional copies is intended to approximate fair use and accommodate the widespread demand for content on distributed electronic devices.

TOKYO 00001779 002.2 OF 002

¶ 18. (SBU) The "dubbing 10" proposal has been under study for some time but was held up by IP rights holders' concerns that their rights and IPR enforcement were being eroded. Revising levies therefore was a move to overcome objections to introducing "dubbing 10."

¶ 19. (SBU) The push to reach a compromise now reportedly resulted from the need to deal with time-shifted viewing of broadcasts before the start of the Beijing Olympics. The ministries' compromises break the deadlock and give Japanese consumers additional flexibility in handling digital content. However, they are not likely to satisfy fully any of the concerned stakeholders. The horse trading required to achieve even this fairly minor compromise may be a sign of what to expect as the GOJ works to consolidate telecommunications and broadcasting laws over the next few years.

SCHIEFFER